

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S
MOTION IN LIMINE TO EXCLUDE TEXT AND EMAIL COMMUNICATIONS**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and moves the Court for an order in *limine* to preclude use of text communications and email communications of Bernie Dolan. In discovery, the parties have exchanged copies of certain email communications and text messages between WVSSAC Executive Director Bernie Dolan and other individuals, as well as email communications received by Bernie Dolan without response. The communications contain hearsay, and no exception to the hearsay rules applies to these communications. Thus, they should be excluded pursuant to Rule 801 of the Federal Rules of Evidence.

Further, the communications are not relevant to the material issues, making exclusion proper pursuant to Rules 401 and 402 of the Federal Rules of Evidence. Additionally, the prejudicial value of such communications outweighs any probative value that the materials may have. The communications create the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time, such that they should not be admitted as evidence at trial or used for any other purpose. WVSSAC contemporaneously submits its Memorandum of Law in support of the relief requested.

WVSSAC moves this Honorable Court for an order in *limine* prohibiting the use of text communications and email communications of Bernie Dolan.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

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CERTIFICATE OF SERVICE

I hereby certify that I, Kimberly M. Bandy, have this, the 22nd day of June, 2022, served a true and exact copy of the foregoing **“West Virginia Secondary School Activities Commission’s Motion in Limine to Exclude Text and Email Communications of Bernie Dolan”** with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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